Denver Law Review

Volume 59 | Issue 4 Article 7

February 2021

Privacy Rights v. Law Enforcement Difficulties: The Clash of Competing Interests in New York v. Belton

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PRIVACY RIGHTS V. LAW ENFORCEMENT DIFFICULTIES: THE CLASH OF COMPETING INTERESTS IN *NEW YORK V. BELTON*

INTRODUCTION

The fourth amendment of the United States Constitution guarantees a personal right of privacy, free from unreasonable searches and government invasions.[1] The interests protected by the fourth amendment, which requires a search warrant in order to lawfully conduct a search of "persons, houses, papers, and effects,"[2] have been the subject of considerable litigation.[3] One important aspect of the development of fourth amendment requirements and protections has been the creation of exceptions to the search warrant requirement.

The United States Supreme Court has held that certain exigent circumstances obviate the search warrant requirement.[4] For instance, the inherent mobility and diminished privacy interests with respect to one's automobile have been held to justify a warrantless search of an automobile on probable cause.[5] Another exception arises for a search conducted contemporaneous to a lawful arrest.[6] The boundaries of a warrantless search have been the subject of constant fluctuation.[7]

The major decision defining the scope of a search incident to arrest, *Chimel v. California*,[8] represents the United States Supreme Court's attempt at settling the vacillation and confusion in this area. However, major difficulties have plagued the lower federal and state courts in their application and interpretation of *Chimel*, under differing factual circumstances.[9] With respect to automobiles, the lawful extent of a warrantless search has been

1. Under the fourth amendment a search into an area in which a party has a legitimate expectation of privacy may be held unconstitutional. Katz v. United States, 389 U.S. 347 (1967). A search generally involves exploratory investigation, or an invasion by a law officer. 1 W. LAFAVE, SEARCH AND SEIZURE § 2.1(a) (1978 & Supp. 1980).

2. U.S. CONST. amend. IV. The importance of a search warrant was discussed in McDonald v. United States, 335 U.S. 451 (1948), which stated in part that, "the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done . . . so that an objective mind might weigh the need to invade that privacy in order to enforce the law." *Id.* at 455.

3. *See generally* 1 W. LAFAVE, *supra* note 1. This three-volume work, which deals exclusively with the fourth amendment, reflects the enormous amount of litigation involved in the evolution of rights under that amendment.

4. *See infra* note 15.

5. Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925). *See also* United States v. Ross, 102 S. Ct. 2157 (1982), where the United States Supreme Court defined the permissible scope of a search under the automobile exception. *See infra* notes 117-121 and accompanying text.

6. Gustafson v. Florida, 414 U.S. 260 (1973); United States v. Robinson, 414 U.S. 218 (1973). *See infra* text accompanying note 38.

7. "Few areas of the law have been as subject to shifting constitutional standards over the last 50 years as that of the search 'incident to an arrest.' " Chimel v. California, 395 U.S. 752, 770 (1969) (White, J., dissenting). *See* Wright, *Must the Criminal Go Free if the Constable Blunders?* 50 TEX. L. REV. 736, 740 (1972).

8. 395 U.S. 752 (1969).

9. *See infra* note 10.

intolerably confusing.[10] *New York v. Belton*[11] exemplifies the difficulties encountered by courts in considering what constitutes the scope of a search incident to an arrest, when the locus of the arrest is an automobile.

This comment will explore the development of, and justifications for, a permissible search incident to a lawful arrest, as well as the competing privacy interests and law enforcement responsibilities present in a fourth amendment case. Furthermore, it will examine the possible effect of *New York v. Belton* upon the law of search and seizure.

I. SEARCH INCIDENT TO ARREST

A. *Early History*

The fourth amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.[12]

This amendment guarantees to all citizens a personal right of privacy, free from unreasonable governmental searches and invasions. The fourth amendment does not prohibit all searches, only those that are unreasonable.[13] When a search is unreasonable as a matter of law, the exclusionary rule, which precludes the use of illegally obtained evidence, is activated.[14]

The United States Supreme Court has consistently held that "searches conducted without the authority of a search warrant are *per se* unreasonable under the Fourth Amendment subject only to a few specifically established and delineated exceptions."[15] These specific exceptions are "jealously and carefully drawn."[16] Proof of exigent circumstances or the existence of another exception obviates the warrant requirement.[17]

Supreme Court decisions interpreting the application of the search-incident-to-arrest exception have resulted in constantly shifting methods of analysis.[18] The Court has been unable to establish a strong precedent for

10. *Compare* United States v. Sanders, 631 F.2d 1309 (8th Cir. 1980); United States v. Dixon, 558 F.2d 919 (9th Cir. 1977); *and In re* Kiser, 419 F.2d 1134 (8th Cir. 1969); *with* United States v. Benson, 631 F.2d 1336 (8th Cir. 1980); United States v. Rigales, 630 F.2d 364 (5th Cir. 1980); *and* Thompson v. State, 488 P.2d 944 (Okla. Crim. App. 1971).

11. 453 U.S. 454 (1981).

12. U.S. CONST. amend. IV.

13. Weeks v. United States, 232 U.S. 383 (1914); Boyd v. United States, 116 U.S. 616 (1886).

14. Mapp v. Ohio, 367 U.S. 643 (1961). *See infra* notes 53-67 and accompanying text.

15. Katz v. United States, 389 U.S. 347, 357 (1967) (footnotes omitted). The exceptions to the warrant requirement include: 1) exigent circumstances, Warden v. Hayden, 387 U.S. 294 (1967); 2) automobile searches, United States v. Ross, 102 S. Ct. 2157 (1982); Chambers v. Maroney, 399 U.S. 42 (1970); Carroll v. United States, 267 U.S. 132 (1925); 3) automobile inventory searches, South Dakota v. Opperman, 428 U.S. 364 (1976); 4) "stop and frisk" searches, Terry v. Ohio, 392 U.S. 1 (1968); 5) consent searches, Schneckloth v. Bustamonte, 412 U.S. 218 (1973); 6) "plain view," Coolidge v. New Hampshire, 403 U.S. 443 (1971); and 7) search incident to a lawful custodial arrest, Chimel v. California, 395 U.S. 752 (1969).

16. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971) (quoting Jones v. United States, 357 U.S. 493, 499 (1956)).

17. McDonald v. United States, 355 U.S. 451, 456 (1948).

18. *See generally* Chapman v. United States, 365 U.S. 610, 618 (1961) (Frankfurter, J., con-

application in cases arising under this exception. This inability has generated criticism focusing on the confusion and unpredictability of the decisions.[19]

The groundwork for the search-incident-to-arrest exception may be found in dicta of several Supreme Court decisions.[20] This dicta became the foundation for the decision in *Marron v. United States*,[21] which held there is a "right without a warrant contemporaneously to search the place,"[22] in order to find and seize evidence of crime. This new reasoning was subsequently held inapplicable when the circumstances of the arrest allowed the arresting officers to obtain a search warrant.[23]

The pendulum swung towards further extension of the scope of the search incident to arrest in what were to become the two most influential decisions in this area for almost twenty years. In *Harris v. United States*,[24] the Court sustained a warrantless search of an entire four-room apartment. The Court noted that "[t]he opinions . . . recognized that the search incident to arrest may, under appropriate circumstances extend beyond the person of the one arrested to include the premises under his immediate control."[25] Finding that Harris commanded exclusive control over the entire four-room apartment, the Court emphasized the reasonableness approach.[26] The *Harris* Court also considered the nature of the objects of the search in concluding that both the intensity and length of the search were reasonable.[27]

United States v. Rabinowitz[28] strengthened the *Harris* principle of reasonableness. This decision upheld the search of a desk, safe, and file cabinets contained in a one-room office where the arrest occurred. Applying the "reasonableness of all the circumstances test,"[29] in upholding the search, the

curring); Aaronson & Wallace, *A Reconsideration of the Fourth Amendment's Doctrine of Search Incident to Arrest*, 64 GEO. L.J. 53 (1975); Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974); Dworkin, *Fact Style Adjudication and the Fourth Amendment: The Limits of Lawyering*, 48 IND. L.J. 329 (1973).

19. *See generally* Dworkin, *supra* note 18.

20. *See* Weeks v. United States, 232 U.S. 383, 392 (1914) (upheld the government's right to search the person, incident to arrest, to discover and seize the fruits or evidences of crime); Carroll v. United States, 267 U.S. 132, 158 (1925) (upheld the right to seize whatever evidence is found upon the arrestee's person or within his control); Agnello v. United States, 269 U.S. 20, 30 (1925) (upheld the right to search the place of arrest to find weapons or evidence of crime). For the early development of fourth amendment rights, see generally N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, 51-78 (1937).

21. 275 U.S. 192 (1927).

22. *Id.* at 199.

23. Go-Bart Importing Co. v. United States, 282 U.S. 344, 358 (1931). *See also* Trupiano v. United States, 334 U.S. 699, 710 (1948) (there is a prohibition against general exploratory searches).

24. 331 U.S. 145 (1947), *overruled*, Chimel v. United States, 395 U.S. 768 (1968).

25. 331 U.S. at 151.

26. "[O]nly unreasonable searches and seizures . . . come within the constitutional interdict. The test of reasonableness cannot be stated in rigid and absolute terms." *Id.* at 150.

27. "The same meticulous investigation which would be appropriate in a search for two small cancelled checks could not be considered reasonable where agents are seeking a stolen automobile or illegal still." *Id.* at 152.

28. 339 U.S. 56 (1950), *overruled*, Chimel v. United States, 395 U.S. 768 (1968).

29. The Court stated that "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." 339 U.S. at 66. "The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of

Court found no unreasonable extension beyond the area of the arrestee's immediate control.[30]

The *Harris-Rabinowitz* principle, as applied by the lower courts, did not limit the scope of a permissible search to places where an arrestee could obtain a weapon or destroy evidence. The major limitation that evolved in subsequent cases interpreting *Harris* and *Rabinowitz* was the restriction of the search to the premises where the defendant was arrested.[31]

Theories based upon control and possession allowed the lower federal and state courts to uphold substantially intrusive searches.[32] As applied by these courts, the *Harris-Rabinowitz* principle did not entail inquiry into the arrestee's ability to control the area subject to search.[33]

B. Chimel v. California: *The Warren Court's Attempt to Enunciate a Rule*

The scope of a search incident to arrest, as developed in the *Harris-Rabinowitz* decisions and in lower court interpretations, was drastically curtailed by the Warren Court. *Chimel v. California*[34] was the pinnacle of the Court's decisions broadening fourth amendment protections. This decision restricted the scope of a search incident to arrest to that area within the arrestee's immediate control.[35] The law enforcement officers in *Chimel* obtained an arrest warrant, but no search warrant. Concurrent with Chimel's lawful arrest at his home, the officers conducted a full search of his residence.[36]

The Court, in stressing the importance of procuring a search warrant, recognized that certain exigent circumstances created exemptions from the fourth amendment's search warrant requirement.[37] The test the Court espoused allowed the arresting officer the authority:

> [T]o search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area

each case." *Id.* at 63 (construing Go-Bart Importing Co. v. United States, 282 U.S. 344, 357 (1931)).

30. 339 U.S. at 64.

31. *See, e.g.*, James v. Louisiana, 382 U.S. 36 (1965) (search of a home invalidated when defendant arrested several blocks away); United States v. Preston, 376 U.S. 364 (1964) (search must be contemporaneous to arrest); Smith v. United States, 254 F.2d 751 (D.C. Cir. 1958) (search upstairs, arrest downstairs). *See* 2 W. LAFAVE, SEARCH AND SEIZURE § 6.3 (1978 & Supp. 1980).

32. 2 W. LAFAVE, *supra* note 31, § 7.1 at 498.

33. *Id. See, e.g.*, Arwine v. Bannan, 346 F.2d 458 (6th Cir.), *cert. denied*, 382 U.S. 882 (1965) (search of automobile while arrestee was handcuffed); Crawford v. Bannan, 336 F.2d 505 (6th Cir. 1964), *cert. denied*, 381 U.S. 955 (1965) (search of passenger area while arrestee was in squad car); United States *ex rel* Foose v. Rundle, 269 F. Supp. 1017 (E.D. Penn. 1967), *aff'd per curiam*, 389 F.2d 54 (3d Cir.), *cert. denied*, 392 U.S. 914 (1968) (search of automobile upheld as a search incident to arrest when arrestee was in police custody at station house).

34. 395 U.S. 752 (1969). For detailed discussions of *Chimel*, see Aaronson & Wallace, *supra* note 18; Amsterdam, *supra* note 18; Comment, *Scope of Searches Incident to Arrest*, 43 U. COLO. L. REV. 63 (1971) [hereinafter cited as *Scope of Searches*]; Comment, *Search and Seizure—Permissible Scope of a Search Incident to a Valid Custodial Arrest*, 8 U. RICH. L. REV. 610 (1974).

35. 395 U.S. at 763.

36. The officers, accompanied by Chimel's wife, searched the three-bedroom home, including the garage and the attic. *Id.* at 754.

37. *Id.* at 762.

> into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. . . . There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.[38]

Chimel represents the Warren Court's endeavor to balance the law enforcement interests of the state with the privacy interests of the individual,[39] and to clarify the "quagmire"[40] that had developed around the search-incident-to-arrest exception. The *Chimel* holding, in overruling the *Harris-Rabinowitz* principle, set down a sweeping guideline governing searches incident to arrests and formulated a standard for application by law enforcement officials. The manner in which this principle was enunciated established few positive guidelines for law enforcement officials to follow.[41] This lack of positive direction from *Chimel* resulted in the Supreme Court granting certiorari in numerous subsequent cases to clarify *Chimel*.[42]

The difficulty the lower courts were having with the lack of positive guidelines from the Court partially arose from differing interpretations of the issue in *Chimel*. The issue in *Chimel* was whether the area subject to search, at the moment of the search, was accessible to the arrestee.[43] However, lower federal and state courts interpreted the issue to be whether the arrestee could have reached the area subject to the search at any time. This interpretation resulted in an expansion of the area considered subject to the immedi-

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38. *Id.* at 763. For cases applying the *Chimel* principle to automobile searches, *see supra* note 10, and United States v. Chadwick, 433 U.S. 1 (1977); United States v. Edwards, 415 U.S. 800 (1974); Gustafson v. Florida, 414 U.S. 260 (1973); United States v. Robinson, 414 U.S. 218 (1973).

39. *See infra* note 50 and accompanying text.

40. *See* LaFave, *Warrantless Searches and the Supreme Court: Further Ventures into the "Quagmire,"* 8 CRIM. L. BULL. 9 (1972). Professor LaFave remarked that after *Chimel*, "it would seem that a full search of the vehicle . . . could no longer be upheld as a search incident to arrest," placing the automobile exception in effect. *Id.* at 18.

41. For criticism of the *Chimel* holding, see generally Aaronson & Wallace, *supra* note 18. The authors maintain *Chimel* lacks a defensible basis, resulting in inconsistent application by both the lower courts and law enforcement officials. *Chimel* left this area of the law ambiguous and uncertain. *Id. See also* Carrington, Chimel v. California—*A Police Response*, 45 NOTRE DAME LAW. 559 (1970). When the police searched Chimel's house they were actually within the scope of *Harris-Rabinowitz*. *Id.* at 564. Carrington also suggested that *Chimel*'s overbreadth resulted in two problems: 1) police do not know what conduct is appropriate; and 2) judges applying *Chimel* have great latitude for interpretation. *Id.* at 568.

42. *Gustafson v. Florida*, 414 U.S. 260 (1973), and *United States v. Robinson*, 414 U.S. 218 (1973) applied the *Chimel* standard in holding that an arresting officer has authority to search the person of an arrestee incident to an arrest for a traffic violation. The Court found that the person of the arrestee falls within the area of the arrestee's immediate control. The searches at issue in both *Robinson* and *Gustafson* did not extend beyond the arrestee's person.

United States v. Chadwick, 433 U.S. 1 (1977), addressed whether a footlocker placed in an automobile trunk may be searched two hours after arrest, as incident to arrest. Finding *Chimel* inapplicable to the facts, the Supreme Court held:

> Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.

Id. at 15.

43. 2 W. LAFAVE, *supra* note 31, § 7.1 at 501.

ate control of the arrestee.[44] In light of lower court interpretations of *Chimel*, *New York v. Belton* presented an opportunity for the Court to clarify the definition of the area within the immediate control of the arrestee, when the locus of the arrest is an automobile.[45]

C. *Clash of Competing Interests*

Fourth amendment cases place constitutionally protected privacy interests against the responsibilities of law enforcement officers to combat crime.[46] The two interests are positioned in such a manner that the protection of one interest often curtails the other.[47] It is the court's responsibility to balance the public's interest in safety against the individual's right to privacy free from arbitrary interference by police officers.

Law enforcement officials' decisions to search subsequent to a lawful arrest are necessarily swift *ad hoc* judgments, leaving little room for them to contemplate the legality of their actions.[48] Therefore, in order for policemen to work within constitutional limitations, the Court must provide guidelines.[49] Since the fourth amendment regulates law enforcement officials in their daily conduct, its requirements need "to be expressed in terms that are readily applicable by the police."[50]

Juxtaposed against the duties of law enforcement officials are the personal interests protected by the fourth amendment. Individuals are guaranteed freedom from unreasonable invasions of legitimate privacy interests.[51] These privacy interests are "indispensable to the full enjoyment of personal security, personal liberty and private property . . . [and] they are to be regarded as the very essence of constitutional liberty."[52]

D. *The Exclusionary Rule*

Seizure of evidence in violation of an individual's fourth amendment rights invokes the exclusionary rule. The rule bars the prosecution from introducing illegally seized evidence at trial.[53] Currently the major rationale

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44. United States v. Frick, 490 F.2d 666, 673 (5th Cir. 1973) (Goldberg, J., concurring in part and dissenting in part), *cert. denied*, 419 U.S. 831 (1974).

45. 453 U.S. at 459.

46. *See* Robbins v. California, 453 U.S. 420, 431 (1981) (Powell, J., concurring).

47. This balancing process constitutes a tremendous challenge to those in the criminal justice system. *See generally* LaFave, *supra* note 40.

48. *See* Carrington, *supra* note 41, at 560.

49. It has been urged that reviewing courts need to consider the realities of the situation. *Id.* at 567.

50. *See* LaFave, *supra* note 40, at 141-42.

> [I]f the rules are impossible of application . . . the result may be the sustaining of motions to suppress . . . . [B]ut this can hardly be taken as proof . . . people are secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . . Rather, that security can only be realized if the police are acting under a set of rules which . . . makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.

Id. at 142.

51. *See supra* note 1 and accompanying text. Although any search is an invasion of privacy, it is only unreasonable searches that are constitutionally prohibited.

52. Gouled v. United States, 255 U.S. 298, 304 (1921).

53. Mapp v. Ohio, 367 U.S. 643 (1961). *See generally*, W. LAFAVE, *supra* note 1, at §§ 1.1-1.2, 3-3.9; Amsterdam, *supra* note 18; Kaplan, *The Limits of the Exclusionary Rule*, 26 STAN. L. REV. 1027 (1974); Wright, *supra* note 7.

of the rule lies in its potential deterrent effect,[54] however, the preservation of judicial integrity is another suggested justification.[55]

The trend towards the deterrence rationale as the sole justification for the exclusionary rule has lead to the erosion of the rule's application. There is a growing tendency to find that the harmful consequences of the rule outweigh any deterrent effect,[56] as well as a tendency to hesitate in applying the rule to anything less than flagrant or willfull violations of fourth amendment rights.[57] The exclusionary rule has been held inapplicable in grand jury proceedings,[58] impeachment of witnesses,[59] actions under statutes subsequently held invalid,[60] and administrative proceedings.[61]

The criticisms directed at the exclusionary rule,[62] coupled with the current trend by the Court, suggest that modification of the exclusionary rule may be imminent.[63] Justice White's dissent in *Stone v. Powell*[64] proposed bar-

54. Stone v. Powell, 428 U.S. 465 (1976). *See generally* United States v. Calandra, 414 U.S. 338 (1974); Elkins v. United States, 364 U.S. 206 (1960); Wolf v. Colorado, 338 U.S. 25 (1949).

55. The exclusionary rule's preservation of judicial integrity is based upon the idea that the exclusion of illegally obtained evidence will bar the courts from becoming accomplices with police actions violating constitutional rights the courts are required to protect. *See* Olmstead v. United States, 277 U.S. 438 (1928); Weeks v. United States, 232 U.S. 383 (1914).

56. *See, e.g.*, United States v. Calandra, 414 U.S. 338 (1974). Many studies have attempted to evaluate the impact of the exclusionary rule. The result of these studies is that no one "has yet been able to establish with any assurance whether the rule has any deterrent effect . . . ." United States v. Janis, 428 U.S. 433, 450 n.22 (1976). *See generally* Canon, *Is the Exclusionary Rule in Failing Health? Some New Data and A Plea Against a Precipitous Conclusion*, 62 KY. L.J. 681 (1974); Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives*, 2 J. LEG. STUD. 243 (1973).

It has been asserted that "the costs of the exclusionary rule are immediately apparent, while its benefits are only conjectural. When courts apply the rule, law enforcement officials are deprived of incriminating evidence. In contrast, any police misconduct that would have occurred but for the deterrent effect of the suppression order is purely speculative." Mertens and Wasserstrom, *The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law*, 70 GEO. L.J. 365, 394 (1981).

See generally Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970); Comment, *The Erosion of the Exclusionary Rule Under the Burger Court*, 33 BAYLOR L. REV. 352 (1981); Comment, *Broadening the Scope of a Search Incident to Arrest: The Burger Court's Retreat from* Chimel, 24 EMORY L.J. 151 (1975).

57. *See* Bivens v. Six Unknown Named Agents, 403 U.S. 388, 415, 419 (1971) (Burger, C.J., dissenting).

58. United States v. Calandra, 414 U.S. 338 (1974).

59. United States v. Havens, 446 U.S. 620 (1980); Harris v. New York, 401 U.S. 222 (1971); Walder v. United States, 347 U.S. 62 (1954).

60. Michigan v. DeFillippo, 443 U.S. 31 (1979).

61. Camara v. Municipal Court, 387 U.S. 523 (1967).

62. *See* Bernardi, *The Exclusionary Rule: Is a Good Faith Standard Needed to Preserve a Liberal Interpretation of the Fourth Amendment*, 30 DE PAUL L. REV. 51 (1980); Burger, *Who Will Watch the Watchman?*, 14 AM. U.L. REV. 1 (1964); Note, *The Erosion of the Exclusionary Rule Under the Burger Court*, 33 BAYLOR L. REV. 363 (1980).

It has been argued that the exclusionary rule fails to deter because: 1) The deterrent effect operates only when police officers know what specific rules apply; 2) The officer suffers no penalty from his actions, often having no knowledge of the consequences; 3) It fails to reach non-evidence-gathering activities. *See* Bernardi, *supra*; Burger, *supra*.

On the other hand, one commentator has asserted that the exclusionary rule is "indispensable to the development of law by lower courts. Suppression litigation provides the principal occasion for appellate courts to clarify and refashion the broad principles of the fourth amendment; it also permits development of coherent standards through case-by-case adjudication of more fact-specific questions." Mertens & Wasserstrom, *supra* note 56, at 402.

63. An important consideration for examining the future of the exclusionary rule is the effect Justice O'Connor will have on the Court. Although she has not voiced any intention to overrule the exclusionary rule, during her confirmation hearings she remarked that "evidence

ring the rule's application in those circumstances where the evidence at issue was seized by an officer acting in the good faith belief that his conduct comported with existing law and having reasonable grounds for this belief.[65] This "good faith" rule is based upon the assumption that the purpose of the exclusionary rule is the deterrence of willful police misconduct. It is argued that when the officer does not know his actions are illegal or he acts under the mistaken assumption that they are legal, the exclusionary rule has no deterrent effect.[66] Whether it is perceived as an exception to or modification of the exclusionary rule, the "good faith" standard can be seen as protecting individual rights only when deterrence of illegal police conduct can be effectively achieved.[67]

Although the United States Supreme Court has not yet adopted the good faith standard suggested by Justice White,[68] the Fifth Circuit, in *United States v. Williams*,[69] recently proclaimed its acceptance of this change in the exclusionary rule. The Fifth Circuit modified the exclusionary rule to the

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may not need to be excluded if standards were applied that take into account the good faith of the police." Mertens & Wasserstrom, *supra* note 56, at 370 (quoting *Confirmation Hearing of Sandra Day O'Connor* Before the Senate Judiciary Comm., 97th Cong., 1st Sess. 143 (Sept. 9, 1981)).

Because at least four other Justices have voiced their dissatisfaction with the exclusionary rule, the addition of Justice O'Connor to the Court may create a majority in favor of overruling the exclusionary rule. *See* California v. Minjares, 443 U.S. 916 (1979) (Burger, C.J., Rehnquist, J., dissenting); Stone v. Powell, 428 U.S. 465, 538 (1976) (White, J., dissenting) (suggesting a good faith exception); Brown v. Illinois, 422 U.S. 590, 610-12 (1975) (Powell, J., concurring in part) (suggesting a sliding scale test based upon the flagrancy of the fourth amendment violation).

In defense of the good faith exception, several advantages have been mentioned. The good faith standard would provide for judicial review of fourth amendment questions, would maintain judicial integrity and public respect, and would encourage the states' formation of alternative procedures of deterrence. Bernardi, *supra* note 62, at 101-03.

Critics of the good faith exception maintain that it would 1) curtail the fourth amendment protections, Mertens & Wasserstrom, *supra* note 56; 2) would encourage law enforcement officials' ignorance of the law, Kaplan, *supra* note 53; and 3) would diminish whatever deterrent impact the exclusionary rule may have; Ball, *Good Faith and the Fourth Amendment: The "Reasonable" Exception to the Exclusionary Rule*, 69 J. CRIM. L. & CRIMINOLOGY 635 (1978).

64. 428 U.S. 456, 538 (1976) (White, J., dissenting); *see* Ball, *supra* note 63; Bernardi, *supra* note 62; Mertens & Wasserstrom, *supra* note 56.

65. 428 U.S. at 538.

66. *Id.* at 539.

67. Another proposed modification of the exclusionary rule is based upon the concept of substantial violations of an individual's fourth amendment rights. A motion to suppress would be granted only if the trial court found the alleged violations to be gross, willful, and prejudicial to the accused. In its determination of the substantiality of the violation, the trial court would be required to take into account all circumstances concerning the proposed violations, including:

(a) the extent of deviation from lawful conduct;
(b) the extent to which the violation was willful;
(c) the extent to which privacy was invaded;
(d) the extent to which exclusion will tend to prevent violations of this Code;
(e) whether, but for the violation, the things seized would have been discovered; and
(f) the extent to which the violation prejudiced the moving party's ability to support his motion, or to defend himself in the proceeding in which the things seized are sought to be offered in evidence against him.

A.L.I., A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 150.3 (Proposed Official Draft, 1975).

68. Stone v. Powell, 428 U.S. 456, 538 (1976) (White, J., dissenting).

69. 622 F.2d 830 (5th Cir. 1980) (per curiam) (en banc), *cert. denied*, 449 U.S. 1127 (1981). The arresting officer was found to have a reasonable belief, motivated by good faith, that he

extent that evidence is admissible "where it is discovered by officers in the course of actions that are taken in good faith and in the reasonable though mistaken belief that they are authorized."[70] This holding, grounded on the belief that that the exclusionary rule's purpose is to deter only willful or flagrant violations of fourth amendment rights, may have a considerable impact on the status of the exclusionary rule in other jurisdictions.[71]

II. FACTS OF *NEW YORK V. BELTON*

Patrolman Douglas Nicot, observed an automobile traveling at an excessive rate of speed as it passed his patrol car on a New York thruway.[72] After stopping the automobile, he asked the driver for his driver's license and the automobile's registration. As the driver rolled down the window, Nicot smelled burnt marijuana and noticed an envelope marked "Supergold" on the floor of the car. Nicot directed the four occupants to get out of the automobile and then proceeded to "frisk" them.[73] Nicot had only one pair of handcuffs which led him to believe it was necessary to split the four men into separate areas of the thruway. They were positioned in such a manner as to preclude physical touching, while still being in close proximity to the two-door vehicle.[74]

The officer retrieved the envelope marked "Supergold" from the car's interior. This envelope contained traces of marijuana, leading to the arrest of the four men for possession of marijuana. After the arrestees were read their *Miranda*[75] rights, they were individually searched for further contra-

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had the authority to arrest. Although this officer did not have the authority to arrest, his good faith belief was held to be sufficient to preclude the exercise of the exclusionary rule. *Id.* at 844.

For an in depth analysis of United States v. Williams, *see* Mertens & Wasserstrom, *supra* note 56; Comment, *Exclusionary Rule: Good Faith Exception—The Fifth Circuit's Approach in* United States v. Williams, 15 GEO. L. REV. 487 (1981); Note, United States v. Williams, 13 ST. MARY'S L.J. 179 (1981).

70. 622 F.2d at 840.

71. *Id.* This "good faith" exception was codified by the Colorado Legislature:

> (1) Evidence which is otherwise admissible in a criminal proceeding shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer, as a result of a good faith mistake or of a technical violation . . . .
>
> (2)(a) "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause . . . .
>
> (b) "Technical violation" means a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled.

COLO. REV. STAT. § 16-3-308 (1973), *as amended by* 1981 Colo. Sess. Laws, Ch. 188. The United States Congress has also considered a codification of some form of the good faith exception. *See* S. 101, 97th Cong., 1st Sess.; S. 751, 97th Cong., 1st Sess. (1981).

72. Nicot approximated the rate of speed to be 75 miles per hour in a 55 mile per hour zone. Brief for Respondent, App. at 13, New York v. Belton, 453 U.S. 454 (1981).

73. Probable cause to arrest exists when the officer feels it is more likely than not that a crime has been committed and was committed by the person to be arrested. Draper v. United States, 358 U.S. 307 (1959). In the *Belton* case, the odor of the marijuana supplied sufficient probable cause for a valid arrest. Therefore, the validity of the arrest was not at issue.

74. Brief for Respondent, App. at 21.

75. Miranda v. Arizona, 384 U.S. 436 (1966), which held that an individual who is taken into custody or otherwise significantly deprived of his freedom should be afforded the following procedural safeguards to protect the privilege against self-incrimination:

> He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right

band. A search of the interior of the two-door vehicle revealed approximately eight marijuana cigarettes as well as five outer garments in the back seat. One of these garments was a jacket with zippered pockets belonging to Roger Belton, one of the four arrestees. A search of the zippered pockets revealed a rolled-up twenty-dollar bill containing suspected cocaine.[76]

Roger Belton was subsequently indicted by the Ontario County Grand Jury for criminal possession of a controlled substance in the fifth degree. The trial court denied his motion to suppress the cocaine as the fruit of an illegal search.[77] The Appellate Division of the New York Supreme Court unanimously affirmed the denial of the motion to suppress.[78] This lower court found the search of Belton's jacket justified as a search incident to an arrest. The New York court relied on the *Chimel* holding that incident to an arrest, a search may be made of the area within the arrestee's immediate control.[79] The court described this area as including effects of the arrestee that are "ready to hand."[80]

The New York Court of Appeals reversed the Appellate Division, holding that under the circumstances of the arrest the search was unreasonable.[81] The court asserted that once Belton had been removed from the vehicle and placed under arrest, "a search of the interiors of a private receptacle safely within the exclusive custody and control of the police may not be upheld as incident to his [Belton's] arrest."[82] In spite of his arrest, Belton retained a strong privacy interest in his jacket. Furthermore the court found that because Belton was effectively neutralized and his jacket was in the exclusive custody and control of the officer, there was no possibility for the destruction of evidence or access to weapons. Hence, the court concluded that a search warrant was required prior to commencing a search of a jacket, under these circumstances.[83]

III. THE UNITED STATES SUPREME COURT'S HOLDING

In a five-to-one-to-three decision,[84] the United States Supreme Court reversed the holding of the New York Court of Appeals. The Court stressed the importance of the fourth amendment requirement that a search warrant

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to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 478-79.

76. Brief for Respondent, App. at 21. The officer took the jacket from the back seat of the arrestees' car into the patrol car. *Id.* at 50, 55.

77. People v. Belton, 68 A.D.2d 198, 416 N.Y.S.2d 922 (1979). Belton preserved his claim that the warrantless search of his jacket violated his fourth amendment rights.

78. 68 A.D.2d at 200, 416 N.Y.S.2d at 925.

79. *See supra* note 35 and accompanying text.

80. 68 A.D.2d at 200, 416 N.Y.S.2d at 924 (citing People v. Weintraub, 35 N.Y.2d 351, 354, 361 N.Y.S.2d 897, 900, 320 N.E.2d 636, 638 (1974)).

81. People v. Belton, 50 N.Y.2d 447, 429 N.Y.S.2d 574, 407 N.E.2d 420 (1980).

82. *Id.* at 453, 429 N.Y.S.2d at 577, 407 N.E.2d at 423.

83. *Id.*

84. New York v. Belton, 453 U.S. 454 (1981). Justice Stewart wrote the opinion of the Court in which Chief Justice Burger, Justices Blackmun and Powell joined. Justice Rehnquist filed a separate opinion joining in the opinion of the Court. Justice Stevens filed a separate opinion concurring in the judgment. Justice Brennan wrote a dissenting opinion in which Justice Marshall joined. Justice White filed a separate dissent in which Justice Marshall joined.

be obtained prior to the initiation of a search.[85] The Court noted that exigent circumstances could render the search warrant requirement unnecessary.[86] However, the Court stated that the scope of a search must be strictly limited by the circumstances which rendered its initiation permissible.[87]

The majority, after considering the difficulty of applying *Chimel*,[88] recognized the need for a "bright line" rule[89] to guide police officers in their daily activities.[90] The Court held that the interior of the automobile is arguably part of the area within the immediate control of the arrestee, when the arrestee has been a recent occupant, and that the "articles inside the relatively narrow compass of the passenger compartment of the automobile are in fact generally, if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary item.' "[91] As a result, the majority concluded that when a policeman has effectuated a valid "custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."[92] Consequently, the Court held that any containers within the interior of a vehicle may also be searched when a recent occupant is the subject of a lawful arrest.[93]

While extending the scope of the search to containers, the majority specifically limited the authority to search only the interior of the automobile.[94] Justice Stewart noted that a lawful custodial arrest supersedes any privacy interest the arrestee may have in any container within the interior of the automobile.[95] However, a search extending beyond the interior of the auto-

85. *Id.* at 457.

86. *Id.*

87. *Id.*

88. *Id.* at 458. Justice Stewart suggested that the *Chimel* principle is difficult to apply. The police, with limited expertise and time to reflect on social and law enforcement considerations, require a single, familiar standard. *Id. See supra* notes 49-50 and accompanying text.

89. The majority called for the adoption of a single familiar standard; however, it was the dissent that coined the expression "bright line" rule. Justice Stewart, writing for the majority, noted that the protections of the fourth and fourteenth amendments "can only be realized if the police are acting under a set of rules, which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." 453 U.S. at 458 (quoting LaFave, *"Case by Case Adjudication" versus "Standardized Procedures": The* Robinson *Dilemma*, 1974 SUP. CT. REV. 127, 142).

90. 453 U.S. at 458. Justice Stewart appeared to be persuaded by several commentators. *Id. See generally* LaFave, *supra* note 89. LaFave stressed that the fourth amendment's purpose is to regulate the police. Theses standards of regulation should be "expressed in terms that are readily applicable by police in the context of the law enforcement activities . . . ." *Id.* at 141. *See also* Amsterdam, *supra* note 18; Carrington, *supra* note 41; Dworkin, *supra* note 18; LaFave, *Improving Police Performance Through the Exclusionary Rule—Part II: Defining the Norms and Training the Police*, 30 MO. L. REV. 566 (1965).

91. 453 U.S. at 460.

92. *Id.*

93. "If the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." *Id.* However broad this may seem, the Court attempted to limit its holding to the circumstances involved in *Belton*. The Court stated in a footnote that "[o]ur holding today does no more than determine the meaning of *Chimel*'s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *Id.* at n.3.

94. *Id.* at 460-61 n.4. Luggage, boxes, clothing, and other receptacles, as well as the open or closed glove compartment, are now legitimate objects of a warrantless search of an automobile's interior, incident to the arrest of a recent occupant. *Id.*

95. 453 U.S. at 461. The character of the container is irrelevant. No requirement of prob-

mobile would seemingly violate an individual's right against unreasonable searches under the fourth amendment warrant requirement.[96]

Justice Brennan's dissent[97] agreed with the majority's use of the search-incident-to-arrest exception to the warrant requirement,[98] however, he had difficulty accepting the majority's expansion of the *Chimel* proposition. In Justice Brennan's opinion, the majority's desire to formulate a police guideline ignored the underlying policy rationales originally justifying the search-incident-to-arrest exception. He assessed the *Chimel* standard as narrowly tailored to address the concerns of "the safety of the arresting officer and the preservation of easily concealed or destructible evidence."[99] His analysis of *Chimel* placed a "temporal and a spatial limitation on searches incident to arrest."[100] Justice Brennan concluded his dissent by asserting that the majority "failed to offer any principles to guide the police and the courts in their application of the new rule to nonroutine situations."[101]

IV. ANALYSIS OF *NEW YORK V. BELTON*

A. *Analytical Weaknesses of the* Belton *Decision*

New York v. Belton represents a significant expansion of the scope of a search incident to an arrest, when the locus of the arrest is an automobile. The Court utilized the *Chimel* standard[102] in evaluating the search of Belton's jacket.[103] Where *Chimel* served as a limitation on the arresting officer's

able cause is required by the Court. "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *Id.* (quoting United States v. Robinson, 414 U.S. 218, 235 (1973)).

96. 453 U.S. at 460-61 n.4. The Court dismissed the New York Court of Appeals' conclusion that the jacket was in the exclusive control of the police. *But see* Chadwick v. United States, 433 U.S. 1 (1977). This case presented issues distinguishable from *Belton*. *See supra* note 44.

97. 453 U.S. at 463.

98. *Id.* at 466.

99. *Id.* at 465 (Brennan, J., dissenting). Justice Brennan's major criticism rested with the Court's extension of authority to search when the justifications that create this authority are absent. His analysis assumed that the arrestees, while in custody, had no opportunity to reach for evidence or a weapon. This may be a dubious assumption when the facts associated with the instant case are considered. In *Belton*, there were four suspects and one arresting officer who possessed only one set of handcuffs.

100. *Id.*

101. *Id.* at 470-71 (Brennan, J., dissenting). Justice Brennan suggested that the majority failed to address some of the following issues: How long after the arrest must the search be conducted? What is included in "interior?" Does the holding in *Belton* apply only to automobiles? Does it matter whether the police established probable cause to arrest before or after the suspect left his car? Does the *Belton* rule apply to any container even if it could not hold a weapon or evidence of a crime? *Id.* at 470.

102. 395 U.S. 752 (1969). *See supra* text accompanying note 38.

103. 453 U.S. 453 *passim* (1981). The automobile exception could have been the basis for evaluating the *Belton* search. *See supra* note 5 and accompanying text. As Justice Stevens noted in his dissenting opinion in a case decided the same day as *Belton*, "[I]nstead of relying on the automobile exception to uphold the search of respondent's [Belton's] jacket pocket, the Court takes an extraordinary dangerous detour to reach the same result by adopting an admittedly new rationale applicable to every 'lawful custodial arrest' of the occupant of an automobile." Robbins v. California, 453 U.S. 420, 449-50 (1981) (Stevens, J., dissenting). In a plurality opinion, the *Robbins* Court held unconstitutional the opening of opaque packages found by the police in the recessed luggage compartment of the suspect's car. *Robbins*, unlike *Belton*, involved a warrantless search pursuant to the automobile exception. In light of the holding in *Robbins*, it is doubtful whether the *Belton* search would have been upheld if the Court had decided the case

authority to search incident to a lawful arrest, the *Belton* holding expands the scope of these searches to pre-*Chimel* levels.[104] While *Belton* purports to be an application of *Chimel* to its specific facts[105] the effect of its holding serves as justification for a potentially unlimited search subsequent to a lawful arrest.[106]

The majority in *Belton* substantially departed from the *Chimel* holding by declaring that an open or closed container within the interior of an automobile may be lawfully searched, "since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have."[107] Such a justification ignores prior foundations upon which a search incident to an arrest was based—the need to protect police officers and to prevent the destruction of evidence.[108] By ignoring the foundations which limited the scope of a search incident to arrest, it is conceivable that the *Belton* principle of subordinating privacy interests once a lawful arrest has been effected will be applied to factual situations beyond the context of the automobile.[109]

While there may exist a need for a "bright line" rule in the often unclear area of searches incident to arrest,[110] the Court failed to limit its decision in a manner which would serve to protect an individuals' privacy interests in containers placed in an automobile.[111] The Court allows a search incident to arrest to become a complete justification for a search of the entire interior of an automobile. The Court could have required the police officers to have probable cause to search a container found during the lawful search of the automobile.[112] This probable cause requirement would serve the interests of the law enforcement officials, for if articulable facts substantiating that the necessity of a search existed, thereby establishing probable cause, officers could search the container.[113] This probable cause requirement could therefore serve as a necessary compromise between law enforcement duties and privacy interests of the individual.

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under the automobile exception. *But see* United States v. Ross, 102 S. Ct. 2157 (1982) and *infra*, notes 116-22 and accompanying text.

104. 453 U.S. at 460. *See supra* note 33.

105. *Id.* n.3.

106. *Id.* at 468 (Brennan, J., dissenting). *See infra* text accompanying note 114.

107. *Id.* at 461. This proposition was specifically rejected by the Court in *Chimel*. 395 U.S. at 766 n.12. The majority in *Belton* dispensed with precedents by not classifying Roger Belton's zippered pocket as a closed container in which there was a reasonable expectation of privacy.

108. 395 U.S. at 763.

109. State v. Gomez, 632 P.2d 586 (Colo. 1981). The Colorado Supreme Court upheld the search of a motel room as incident to arrest, through its application of the *Chimel* principles to the facts, while citing *Belton*.

110. *See supra* note 90.

111. *See* 453 U.S. at 460-61 n.4. The Court seemed to ignore that "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Id.* at 2862 (quoting Terry v. Ohio, 392 U.S. 1 (1968) and Chimel v. California, 395 U.S. 752 (1969), where definite limitations were placed upon the warrantless searches).

112. One commentator has suggested this method to protect fourth amendment interests. *See Scope of Searches*, *supra* note 34.

113. *See generally* Colorado v. Bannister, 449 U.S. 1 (1980) (upheld search and seizure of evidence in automobile where police officer had probable cause to arrest the occupants and to seize the incriminating items without a warrant).

The Court's decision in *Belton* seems to erase the search warrant requirement while spatially expanding the scope of the authority to search.[114] A likely result of *Belton* is that once a lawful arrest is effected, a warrantless search of an automobile will only rarely be held unconstitutional. The search incident to the arrest could uncover evidence which would give rise to probable cause to search the remainder of the automobile under the automobile exception to the search warrant requirement.[115] As previously discussed, *Belton* could be more appropriately limited and the competing interests balanced by requiring that police officers establish probable cause before searching containers within the interior of an automobile. However, in its present form, *Belton* could lead to the establishment of probable cause to search containers beyond the interior of an automobile. This leaves questions as to what would stop law enforcement officials from conducting a general exploratory search.

Belton's expansion of the scope of a search incident to arrest as previously formulated under *Chimel* could result in significant intrusions upon individual privacy interests. Where the Warren Court liberalized the individual's fourth amendment protections, *Belton* is further evidence of the Burger Court's refusal to expand and in some instances, willingness to limit, the constitutional protections of the individual.

B. *Impact of the Court's Use of Bright Line Rules*

An in depth study of the last fifty years of fourth amendment case law is not necessary to conclude that the entire area is permeated with confusion and inconsistent decisions. Conflicting and differing applications of fourth amendment principles to the same or similar factual patterns is a key explanation for this confusion, as evidenced by the disparate holdings in *Belton, Robbins v. California*,[116] and *United States v. Ross*.[117] The Court's failure to

114. 453 U.S. at 460.

115. Under the automobile exception, the enlarged search would be considered constitutionally permitted. *See supra* note 5 and accompanying text. Under *Ross*, as it has expanded the automobile exception, the officers only need probable cause to believe the object of the search will be found in the container. Thus, an individual lawfully stopped on the highway, may have significantly limited privacy interests. *See infra* note 117.

116. 453 U.S. 420 (1981). Robbins was stopped for erratic driving. After discovering that the vehicle's registration was not in his wallet, he opened the door, whereupon the officers smelled marijuana. *Id.* at 422. After Robbins was patted down, there was a search of the passenger compartment which revealed a vial containing liquid as well as a package of marijuana. Robbins was placed in the patrol car while the officers searched the recessed luggage compartment of the station wagon. The fruits of this search included a tote bag and two green opaque packages. The packages were opened, revealing 15 pounds of marijuana. Robbins' motions to suppress were denied by the trial court and he was convicted. *Id.*

Robbins v. California presented the issue of whether closed containers found during a lawful, warrantless search, authorized under the automobile exception, may themselves be searched in the absence of a warrant. Under *Robbins*, a closed container found during the lawful search of an automobile, pursuant to the automobile exception, could not be opened without the authority of a search warrant. The plurality opinion, written by Justice Stewart, held that a "closed piece of luggage found in a lawfully searched car is constitutionally protected to the same extent as are closed pieces of luggage found anywhere else." 453 U.S. at 425. The exact nature of the container was considered unimportant as long as the container was closed, opaque, and manifesting an expectation of privacy. The court saw no need to distinguish between the relative privacy interests in "personal" as opposed to "impersonal" effects. 453 U.S. at 426. However, any container that clearly announced its contents was considered to be in plain view and there-

apply a similar analysis to these cases, adds to the existing confusion in this area of the law.[118]

In *Ross*, the United States Supreme Court held that the scope of a warrantless search conducted under the authority of the automobile exception, is to be "no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause."[119] The Court went on to say that the scope of the search of an automobile under this exception is not dependent upon the nature of the container that is suspected to be the locus of the contraband. The only limit to this broad authority to search is found in the requirement of probable cause to believe the container is the locus of the object of the search.[120]

Belton expands the scope of a search incident to arrest at the expense of certain privacy interests. Similarly, *Ross* expands the scope of the automobile exception to include the search of the entire automobile and any contents that may conceal the object of the search. Where *Robbins* recognized the need to protect privacy interests during a search conducted pursuant to the automobile exception, *Belton* and *Ross* subordinate these individual privacy interests when a search is conducted under the search incident to arrest exception and the automobile exception, respectively.[121]

The Court's use of "bright line" rules represents a significant departure from the previous approach of case-by-case determinations.[122] The case-by-case approach has contributed to the confusion permeating fourth amendment law, as well as to the confusion of law enforcement officials who have

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fore manifesting no reasonable expectation of privacy, allowing for a search without a warrant. *Id.*

Where Belton expanded the scope of a search incident to arrest at the expense of certain privacy interests, the Court in *Robbins* refused to expand the automobile exception to include the warrantless search of closed containers found in an automobile. *Robbins* recognized the need to protect privacy interests during a search conducted pursuant to the automobile exception, whereas *Belton* subordinated these privacy interests in a search conducted after a lawful arrest.

117. 102 S. Ct. 2157 (1982). Ross was stopped based upon an informant's tip that he was selling narcotics. The police officer discovered a bullet on the front seat of the car, and a pistol in the glove compartment. After arresting Ross, one of the officers opened the trunk of the automobile and discovered a closed paper bag, later found to contain heroin. A thorough search of the car at the police station revealed a zippered leather pouch containing $3,200. The District Court denied Ross' motion to suppress this evidence and he was convicted of possession of heroin with intent to distribute. *Id.* at 2160.

118. Rather than formulate a single "bright line" rule applicable to the factual situations in both cases, the Court handed down "bright line" rules that may be applied in either situation. In *Robbins* it was not asserted that the search was the product of a search incident to arrest, as in *Belton*. The Court will only decide the issues put forward by the parties. 453 at 452 n.15 (Stevens, J., dissenting). Therefore, what appears as opposite holdings is the product of two different theories of fourth amendment law applied to similar factual situation. These two decisions evidence the confusion that is widespread in the fourth amendment decisions. "Viewing similar facts from entirely different perspectives need not lead to identical results." *Id.* at 430 (Powell, J., concurring).

119. 102 S. Ct. at 2172.

120. *Id.*

121. The precedential weight of *Robbins* is questionable in light of *Ross*. The majority opinion in *Ross* recognizing that the holding was inconsistent with *Robbins*, failed to specifically overrule *Robbins*. *Ross* only rejected *Robbins*. *Id.* at 2172. In light of *Ross*' "bright line" rule, it appears that while not specifically overruling *Robbins*, *Ross* has emasculated *Robbins* almost totally. "[T]he Court unambiguously overrules 'the disposition of *Robbins*' . . . though it gingerly avoids stating that it is overruling the case itself." *Id.* at 2181 (Marshall, J., dissenting).

122. *See generally* LaFave, *supra* note 89 at 142.

been forced to second-guess how a court will subsequently analyze a particular fact situation.[123] However, the use of "bright line" rules presents certain difficulties.

The "bright line" rules set forth broad principles of law that can be applied to all factual circumstances resulting in straightforward guidance for both law enforcement officials and courts.[124] "Bright line" rules encourage consistency among decisions, and do not require subjective decisions by the officer in the field. However, it is conceivable that this type of mechanical application may result in infringement upon individual privacy interests. The courts are only required to assess whether the narrow facts of the case at hand fit under the broad "bright line" rule without investigating facts that could lead to an opposite result. These types of rules may contribute further to the current confusion in the fourth amendment law. When a court may apply one of several constitutional tests to similar factual circumstances when assessing the validity of a search, and each is generally associated with a predetermined result, confusion is inevitable. In this context, the law enforcement officer is also forced to guess which test the Court will apply.[125]

Although the case-by-case approach leads to a degree of confusion, an important aspect of this type of judicial determination lies in its flexibility. The fact that fourth amendment cases present an infinite variety of factual circumstances suggests the necessity of limiting holdings to the specific facts of the case at hand. The case-by-case approach best serves this desired result. For example, if narrowed only to apply to the facts of the case, the holding could become more palatable to fourth amendment interests than a broad "bright line" rule. Numerous situations are easily imagined where *Belton*'s holding could become overly oppressive toward fourth amendment privacy rights.[126]

The case-by-case approach, coupled with the good faith modification of the exclusionary rule,[127] could result in greater protection of fourth amendment rights. A case-by-case analysis under this proposed test would take into account the various factual circumstances that may arise. The use of the good faith standard would give law enforcement officials a better idea of whether their conduct will subsequently be declared illegal. While the privacy interests of the individual would receive greater protection, the di-

123. *Id.*

124. *See, e.g.*, United States v. Ross, 102 S. Ct. at 2172; New York v. Belton, 453 U.S. at 460; Robbins v. California, 453 U.S. at 429.

125. This situation is partially rectified by the "bright line" rule of *Ross*. Under *Belton* and *Ross*, it is conceivable that the permissible scope of a search under either exception would extend to the interior and any containers found therein. However whether a search of containers found within the trunk, is subsequently upheld as legal, will depend totally upon the asserted justification for the warrantless search. For example, if the search of Ross' trunk and the containers found there had been argued as a search incident to arrest, under *Belton*, the search would have been declared illegal. *See* State v. Cooper, 636 P.2d 126 (Ariz. App. 1981). The search of a closed box found on the back seat of an automobile was held invalid under the automobile exception, in light of the holding in *Robbins v. California*. The search-incident-to-arrest exception was not raised. Under this exception, as applied in *New York v. Belton*, it is probable that the *Cooper* court would have upheld the search.

126. The same comment applies with equal force to the *Ross* decision. What if in *Belton*, there were an equal number of arrestees to police officers or handcuffs?

127. *See supra* notes 64-66 and accompanying text.

lemma of balancing these competing interests might be solved.[128]

C. *Impact of* Belton *on Searches Incident to Arrests in Automobiles*

The *Belton* decision has been applied in several lower court decisions. For example, in *Government of the Virgin Islands v. Rasool*,[129] the Third Circuit denied a motion to suppress a revolver found in a paper grocery bag located on the back seat of an automobile. The Court of Appeals upheld the search as incident to arrest. Finding parallels between *Belton* and the questioned search, the *Rasool* court held that:

> [A]ny container, regardless of its opacity, or whether it is sealed, may be searched if it is found in the interior of the passenger compartment of a vehicle after a lawful arrest has been effected. If, however, the container is not found in the interior or passenger compartment of the vehicle, but . . . in the trunk . . . then it may not be opened without a search warrant, unless by its very appearance or distinctive configuration or otherwise, its contents are obvious to the observer.[130]

A recent Utah Supreme Court case, *In re K.K.C.*,[131] demonstrates that *Belton*'s "bright line" rule does not necessarily clarify the ambiguities of fourth amendment law, especially with respect to automobiles. In this case, an officer approached a parked truck with the intention of warning the occupants not to litter. Several bottles of beer and drug paraphernalia were in plain view. The officer ordered the two occupants out of the vehicle. He then searched the cab and the bed of the truck. As a result of this search, the officer found more beer and two bags of marijuana, one of which was in a cassette tape case.[132] In upholding the denial of the motion to suppress, the court found the search to be lawful as an incident to arrest. The court assessed the validity of the search before addressing the issue of the legality of the arrest.[133] The record was unclear as to when the arrest occurred; nevertheless, the court found probable cause for the search under the automobile exception. The Utah court upheld the general search by relying on *Belton*. However, the court decided the search of the tape case was not invalid, by using a *Robbins* analysis.[134]

In *People v. Henry*,[135] the Colorado Supreme Court applied *Belton*, in denying a motion to suppress a revolver seized incident to an arrest of the occupants of an automobile. The search commenced after the suspects were

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128. *See supra* notes 48-55 and accompanying text.

129. 657 F.2d 582 (3d Cir. 1981).

130. *Id.* at 590. The case exemplifies an attempt at reconciling the decisions in *Belton* and *Robbins*.

131. 636 P.2d 1044 (Utah 1981).

132. *Id.* at 1045.

133. *Id.* at 1046.

134. *Id.* The misapplication of two conflicting lines of analysis points to the possibility that other courts will also misinterpret *Belton* and *Robbins*.

But see State v. Croft, 635 P.2d 972 (Kan. App. 1981), which exemplifies the ease with which *Belton* can be applied. The defendant was arrested for not having a driver's license in his possession. Subsequent to this arrest, the officer found a radio scanner under the front floor mat. The Kansas court found that under *Belton*, the search was proper. *Id.* at 974.

135. 631 P.2d 1122 (Colo. 1981). This search, conducted at night with a flashlight, was pursuant to a lawful arrest of the occupants of the automobile.

handcuffed and placed in a police vehicle. The Colorado Supreme Court found that the observation of the revolver, in plain view on the floor, occurred moments after the defendant was in custody and still at the scene of arrest. The court held that *Belton* mandated denial of the motion to suppress.[136]

The *Henry* decision exemplifies difficulties that will arise in the application of *Belton* to varying factual circumstances. *Henry* differed significantly from *Belton*. The handcuffed arrestees were in the police car, which may indicate that the principal justifications for a search incident to arrest were absent. However, the court found no difficulty applying *Belton*, upholding this questionable search incident to arrest.[137]

CONCLUSION

The net effect of the Supreme Court's decision in *New York v. Belton* is its emasculation of *Chimel* to the extent that the constitutional definition of the area within the arrestee's immediate control is expanded. *Belton* approves warrantless searches of the interior of an automobile, including any locked or unlocked containers found within this area, when an arrestee is a recent occupant. This holding gives arresting officers unlimited authority to search the interior of an automobile incident to a lawful arrest.

Belton's "bright line" rule will serve as a necessary guideline for law enforcement officials while legitimizing intrusions into once protected privacy interests. The development of this "bright line" rule of constitutional analysis may prove to perpetuate the confusion permeating the fourth amendment, while simultaneously tipping the scales to the advantage of law enforcement.[138] The good faith modification to the exclusionary rule applied concurrently with case-by-case judicial determinations could serve as a viable alternative to the further use of "bright line" rules. The flexibility of this method of analysis will serve not only the interests of law enforcement officials, but also the privacy interests of the individual. This would result in the balancing of the scales between the two competing interests.

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136. *Id.* at 1125. In his dissenting opinion in *Belton*, Justice Brennan hinted at the possibility of future cases construing *Belton* in this manner. "[T]he result would presumably be the same even if Officer Nicot had handcuffed Belton and his companions in the patrol car before placing them under arrest and even if his search had extended to locked luggage or other inaccessible containers located in the back seat of the car." 453 U.S. at 468 (Brennan, J., dissenting).

137. *Id.* at 1125. Other recent cases applying *Belton* include United States v. Cleary, 656 F.2d 1302 (9th Cir. 1981); United States v. Rivera, 654 F.2d 1048 (5th Cir. 1981); People v. Gomez, 632 P.2d 586 (Colo. 1981).

138. The decision in *Ross* is further evidence of the curtailment of individual privacy rights in order to allow law enforcement officials sufficient flexibility.